

United India Periodicals Pvt Ltd Vs Cmyk Printech Ltd

Court: Delhi High Court

Date of Decision: Feb. 5, 2018

Acts Referred: Code Of Civil Procedure, 1908 " Section 89, 96(1), 151, Order 29 Rule 1, Order 43 Rule 1(m), Order 43 Rule 1A, Order 23 Rule 3, Order 23 Rule 3A Order XII Rule 6, Order 9 Rule 13

Code Of Criminal Procedure, 1973 " Section 340

Companies Act, 1956 " Section 291

Indian Contract Act, 1872 " Section 208, 237

Registration Act, 1908 " Section 17, 49

Transfer Of Property Act, 1882 " Section 106

Hon'ble Judges: Manmohan, J

Bench: Single Bench

Advocate: Shyel Trehan, Nikhil Ratti Kapoor, Sanjiv Bahl, Suyash Singh, K.K. Sharma, Anil Kumar Sahu, Rakesh Kumar, Anupam Sharma, Anubha Singh, Shishir Raj

Final Decision: Dismissed

Judgement

Manmohan, J

I.A. 3831-3833/2017 in CS(COMM) 1074/2016

1. I.A. 3831/2017 has been filed by the defendant-applicant under Order XXIII Rules 3 & 3A of Code of Civil Procedure, 1908 (for short

the compromise settlement dated 11th November, 2016 arrived at between the plaintiff on one hand and the defendant on

the other hand in terms of which the present suit was decreed. I.A. 3832/2017 has been filed for stay of operation of the judgment dated 23rd

November, 2016 and I.A. 3833/2017 has been filed for exemption from filing true and typed copies of dim and illegible annexures.

2. Initially, this court wanted to hear the applications filed by the plaintiff in Execution Petition No.19/2017, including the one under Section 340,

Cr.P.C. before pronouncing order in the applications filed by the defendant in the suit. But, as the reply-affidavit of Mr. O.P. Gupta was not filed in

the execution petition for a long time and the court was closing for winter vacations, it was decided to reserve the order only in the present

applications.

3. Mr. K.K. Sharma, learned senior counsel for defendant stated that Mr. O.P. Gupta was an old employee who in connivance with the plaintiff had

defrauded the defendant company by entering into a settlement agreement dated 11th November, 2016, thereby, putting the defendant company not

only to financial loss but also to loss of the suit property, which the defendant company is entitled to retain till 2026 by virtue of

Agreement/Undertaking dated 09th June, 2011. He further stated that the defendant company never had any knowledge about the pendency of the

suit, as the defendant company did not receive any notice of the suit and Mr. O.P. Gupta in connivance with the plaintiff company had manipulated the

service by receiving the summons personally and without intimating it to the defendant company.

4. Mr. K.K. Sharma stated that undisputedly the above-mentioned settlement had been executed by Mr. O.P. Gupta purportedly acting on behalf of

the defendant company on the basis of a Board Resolution dated 29th September, 2001 which was an authorization in his favour made almost fifteen

years prior to the date on which the Deed of Settlement had actually been executed. He stated that in 2008 vide Resolution dated 02nd September,

2008, the previous authorisation in favour of Mr. O.P. Gupta had been revoked and Mr. O.P. Gupta was not supposed to act on the basis of

Resolution dated 29th September, 2001.

5. He pointed out that the parties were sent for mediation vide order dated 10th November, 2016 to appear before the Mediation Centre on 11th

November, 2016 and the settlement was arrived at on the very same date. He contended that there had been no occasion for Mr. O.P. Gupta to put

the proposed terms of settlement before the Board of Directors of the company and therefore, there was no approval of the terms of settlement by

the Board of Directors of the company.

6. According to Mr. Sharma, an authorization which was made almost fifteen years before cannot be considered as a continuous authority in favour of

Mr. O.P. Gupta which had force/legal validity. He submitted that the general authorization by the company made fifteen years ago did not empower

Mr. O.P. Gupta to agree to specific terms of settlement binding the company for financial liability. He also submitted that even if a person has a

general authority, he cannot bind the company by the terms of a specific settlement which had never been put to the Board of Directors of the

company. In support of his submission, he relied upon the following judgments:-

A) Banwari Lal Vs. Chando Devi (Smt.) (Through LR.) & Anr., (1993) 1 SCC 581 wherein it has been held as under:-

11. The present case depicts as to how on February 27, 1991 the court recorded the alleged agreement and compromise in a casual

manner. It need not be impressed that Rule 3 of Order XXIII does not require just a seal of approval from the Court to an alleged agreement

or compromise said to have been entered into between the parties. The statute requires the Court to be first satisfied that the agreement or

compromise which has been entered into between the parties is lawful, before accepting the same. Court is expected to apply its judicial

mind while examining the terms of the settlement before the suit is disposed of in terms of the agreement arrived at between the parties. It

need not be pointed out that once such a petition of compromise is accepted, it becomes the order of the Court and acquires the sanctity of a

judicial order.

12. On behalf of the respondent a stand was taken that the learned Subordinate Judge by his order dated September 20, 1991 could not

have recalled the order dated February 27, 1991 and restored the suit to its original number. It cannot be disputed that the respondent can

support the order of the High Court setting aside order dated September 20, 1991 on any other reason than the reason given by the High

Court.

13. When the amending Act introduced a proviso along with an explanation to Rule 3 of Order XXIII saying that where it is alleged by one

party and denied by the other that an adjustment or satisfaction has been arrived at, "the Court shall decide the question", the Court

before which a petition of compromise is filed and which has recorded such compromise, has to decide the question whether an adjustment

or satisfaction had been arrived at on basis of any lawful agreement. To make the enquiry in respect of validity of the agreement or the

compromise more comprehensive, the explanation to the proviso says that an agreement or compromise "which is void or voidable under

the Indian Contract Act" shall not be deemed to be lawful within the meaning of the said Rule. In view of the proviso read with the

explanation, a Court which had entertained the petition of compromise has to examine whether the compromise was void or voidable under

the Indian Contract Act. Even Rule 1(m) of Order 43 has been deleted under which an appeal was maintainable against an order recording

a compromise. As such a party challenging a compromise can file a petition under proviso to Rule 3 of Order XXIII, or an appeal under

Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Rule 1-A of Order 43 of the Code.

14. The application for exercise of power under proviso to Rule 3 of Order XXIII can be labelled under Section 151 of the Code but when

by the amending Act specifically such power has been vested in the Court before which the petition of compromise had been filed, the power

in appropriate cases has to be exercised under the said proviso to Rule 3. It has been held by different High Courts that even after a

compromise has been recorded, the court concerned can entertain an application under Section 151 of the Code, questioning the legality or

validity of the compromise. Reference in this connection may be made to the cases Tara Bai (Smt) v. V.S. Krishnaswamy Rao; S.G.

Thimmappa v. T. Anantha ; Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh Mangal Mahton v. Behari Mahton and Sri Sri Iswar Gopal

Jew v. Bhagwandas Shaw where it has been held that application under Section 151 of the Code is maintainable. The court before which it

is alleged by one of the parties to the alleged compromise that no such compromise had been entered between the parties that court has to

decide whether the agreement or compromise in question was lawful and not void or voidable under the Indian Contract Act. If the

agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the explanation to the proviso to

Rule 3 and as such not lawful. The learned Subordinate Judge was perfectly justified in entertaining the application filed on behalf of the

appellant and considering the question as to whether there had been a lawful agreement or compromise on the basis of which the court

could have recorded such agreement or compromise on February 27, 1991. Having come to the conclusion on the material produced that

the compromise was not lawful within the meaning of Rule 3, there was no option left except to recall that order.

B). State Bank of Travancore Vs. Kingston Computers India Private Limited, (2011) 11 SCC 524 wherein it has been held as under:-

8. In Para 1 of the suit filed on behalf of the Company, it was pleaded that Shri Ashok K. Shukla is one of the Directors of the Company

and he has been authorised by Shri Raj K. Shukla, the Chief Executive Officer vide authority letter dated 2-1-2003 to do the following

things:

(i) to sign, verify and file a suit for recovery on behalf of the Company against State Bank of Travancore, R.K. Puram Branch, New Delhi,

(ii) to sign, verify and file any document, application to lead evidence, make statement or compromise the matter before the Hon'ble Court,

(iii) to appoint any advocate or pleader or counsel and to sign vakalatnama,

(iv) to represent the Company or appear on its behalf before the court concerned, any public authority or tribunal and to represent for the

purpose of representing the Company, and

(v) to do all other acts, deeds and things whatever is necessary for pursuing the case of recovery against State Bank of Travancore which

are not specifically mentioned.

9. In the written statement filed on behalf of the appellant, an objection was taken as to the maintainability of the suit on the ground that the

plaint has not been signed, verified and filed by a competent and authorised representative on behalf of the Company and that there is

neither any valid Board resolution nor any valid authorisation on behalf of the Company nor a copy of the resolution has been filed along

with the suit. It was also pleaded that the person who has instituted the suit on behalf of the Company is not shown to be a power-of-

attorney holder nor a copy of such power of attorney has been filed with the plaint and the authorisation letter purported to have been

given by the so-called Chief Executive Officer is not a valid authorisation. In the rejoinder filed on behalf of the Company, it was reiterated

that Shri Ashok K. Shukla, who has signed, verified and filed the plaint was authorised by Shri Raj K. Shukla vide authority letter dated 2-

1-2003.

10. In his evidence, which was filed in the form of an affidavit, Shri Ashok K. Shukla claimed that he is one of the Directors of the Company

and has been authorised by Shri Raj K. Shukla vide authority letter dated 2-1-2003 to file the suit. In cross-examination, Shri Ashok K.

Shukla claimed that he was the only Director in the Company and that the Board of Directors of the Company had passed a resolution

authorising Shri Raj K. Shukla to take decisions independently. He also claimed that he had been given the power of attorney on behalf of

the Company, which was filed on record. He however admitted that no resolution was passed by the Board of Directors authorising him to

sign, verify and file the plaint.

11. The trial court analysed the pleadings and evaluated the evidence produced by the parties, referred to the authority letter dated 2-1-

2003 issued by Shri Raj K. Shukla in favour of Shri Ashok K. Shukla and observed:

“A perusal of the aforesaid authority letter shows that Shri Raj K. Shukla in his capacity as CEO of the plaintiff Company had

authorised Shri A.K. Shukla to sign, verify and file the present suit. Apart from this authority letter, the plaintiff Company has not filed on

record any Board resolution authorising Shri A.K. Shukla to sign, verify and institute the present suit. The plaintiff has also not filed on

record its memorandum/articles to show that Shri Raj Kumar Shukla had been vested with the powers or had been given a general power of

attorney on behalf of the Company to sign, verify and institute the suit on behalf of the Company. The present suit, therefore, has been filed

merely on the strength of the authority letter, Ext. PW-1/A

12. The trial court then referred to the judgments of the Delhi High Court in Nibro Ltd. v. National Insurance Co. Ltd., Shubh Shanti

Services Ltd. v. Manjula S. Agarwalla and the Delhi High Court (Original Side) Rules, 1967 and proceeded to observe:

As already stated, it has not been averred in the plaint nor sought to be proved that any resolution had been passed by the Board of

Directors of the plaintiff Company authorising Shri A.K. Shukla to sign, verify and institute the suit. It has also not been averred that the

memorandum/articles of the plaintiff Company give any right to Shri A.K. Shukla to sign, verify and institute a suit on behalf of the plaintiff

Company. It, therefore, follows that the plaint has been instituted by Shri A.K. Shukla only on the authority of Shri Raj K. Shukla, CEO of

the plaintiff Company. Such an authority is not recognised under law and, therefore, I hold that the plaint has not been instituted by an

authorised person. Issue 1 is accordingly, decided against the plaintiff and in favour of the defendants.

13. The Division Bench of the High Court did take cognizance of the fact that the Company had not summoned any witness from the office

of the Registrar of Companies to prove that Shri Ashok K. Shukla was a Director of the Company and that the minute book of the Company

had not been produced to prove the appointment of Shri Ashok K. Shukla as a Director, but reversed the finding of the trial court on Issue

1 on the basis of the authority letter issued by Shri Raj K. Shukla and resolutions dated 14-2-2001 and 19-4-2001, by which the Board of

Directors of the Company had authorised some persons to operate the bank account.

14. In our view, the judgment under challenge is liable to be set aside because the respondent had not produced any evidence to prove that

Shri Ashok K. Shukla was appointed as a Director of the Company and a resolution was passed by the Board of Directors of the Company

to file a suit against the appellant and authorised Shri Ashok K. Shukla to do so. The letter of authority issued by Shri Raj K. Shukla, who

described himself as the Chief Executive Officer of the Company, was nothing but a scrap of paper because no resolution was passed by the

Board of Directors delegating its powers to Shri Raj K. Shukla to authorise another person to file a suit on behalf of the Company.

C). M/s. Nibro Limited Vs. National Insurance Company Ltd., AIR 1991 Delhi 25 wherein it has been held as under:-

22. In the case of National Fertilisers Limited (supra) the question whether the person who had signed the plaint had the authority to

institute the suit was not for consideration before the court and, therefore, the Court held that the revision petition filed by the advocate on

the basis of the Vakalatnama signed by the Estate Officer of the National Fertilisers Limited was competent.

23. On the analysis of the judgments, it is clear that Order, 29, Rule 1 of the Code of Civil Procedure does not authorise persons mentioned

therein to institute suits on behalf of the Corporation. It only authorises them to sign and verify the pleadings on behalf of the Corporation.

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25. It is well-settled that under Section 291 of the Companies Act except where express provision is made that the powers of a company in

respect of a particular matter are to be exercised by the company in general meeting—"in all others cases the Board of Directors are

entitled to exercise all its powers. Individual directors have such powers only as are vested in them by the Memorandum and Articles. It is

true that ordinarily the court will not unsuit a person on account of technicalities. However, the question of authority to institute a suit on

behalf of a company is not a technical matter. It has far-reaching effects. It often affects policy and finances of the company. Thus, unless a

power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company.

Needless to say that such a power can be conferred by the Board of Directors only by passing a resolution in that regard.

26. Chapter IV of the Delhi High Court (Original Side) Rules deal with the question of presentation of suits. Under this Rule, suit can be

presented by a duly authorised agent or by an advocate duly appointed by him for the purpose. This authorization, in my view, in the case

of a company can be given only after a decision to institute a suit is taken by the Board of Directors of the company. The Board of

Directors may in turn authorise a particular director, principal officer or the secretary to institute a suit.

7. Per contra, Ms. Shyel Trehan, learned counsel for the plaintiff company opposed the issuance of notice on I.A. 3831/2017 filed by the defendant

company. She placed heavy reliance on the following admitted facts:-

(i) The defendant company had been the tenant of the plaintiff company since 1991.

(ii) The plaintiff company and defendant company had entered into a Lease Deed dated 09th June, 2011 whereby the plaintiff company leased out the

suit premises to the defendant company for three years and not for fifteen years as pleaded by the defendant in the present application.

(iii) Thereafter, parties entered into unregistered Lease Deed dated 18th April, 2015, whereby month-to-month tenancy was created. As the defendant

company had failed to pay rent for a number of prior months, the arrears of rent due at that time were annexed to the lease deed and signed by both

the parties. The authorised signatory of the defendant company, who executed this Deed was Mr. Abhishek Saxena, Chief Operating Officer.

(iv) Defendant company failed to pay rent even subsequently for a number of months and accordingly, the plaintiff company was constrained to issue

Notice of Termination dated 27th May, 2015.

(v) On 02nd June, 2015, Mr. Abhishek Saxena, COO of the defendant company replied to the Notice of Termination, requesting that the said notice be

kept in abeyance. However, the dues were not cleared.

(vi) On 19th November, 2015, the plaintiff company filed the present suit for eviction, recovery of money, mesne profits and damages, in CS(COMM)

1074/2016.

(vii) On 29th March, 2016, the defendant company filed its written statement which was supported by the verification of Mr. O.P. Gupta (respondent

No.1). In the said verification, Mr. O.P. Gupta stated that he was the authorised signatory of the defendant company.

(viii) On 08th August, 2016, the plaintiff company filed an application under Order XII Rule 6 CPC for judgment on admission and an application under

Section 151 CPC for deposit of rent.

(ix) Replies in opposition to these applications were filed and supported by affidavits of Mr. O.P. Gupta.

(x) On 02nd November, 2016, when the application under Order XII Rule 6 was listed, the learned predecessor of this Court recommended that

parties explore the possibility of an amicable settlement. It further directed the representatives of the parties to remain present in Court on the next

date.

(xi) Negotiations on terms of settlement took place between the parties. Terms were exchanged via email.

(xii) On 09th November, 2016, Ms. Meghna Mishra, Partner, Karanjawala & Co., sent an email circulating draft settlement terms. The said email was

also copied to Mr. Abhishek Saxena, COO, the defendant company and Mr. O.P. Gupta.

(xiii) On 10th November, 2016, this Court directed the parties to appear before the Delhi High Court Mediation and Conciliation Centre on 11th

November, 2016 to conclude the settlement.

(xiv) On 11th November, 2016, the parties executed the Settlement Agreement before the Mediator. The Settlement Agreement was signed by Mr.

O.P. Gupta on behalf of the defendant company and a Board Resolution dated 29th September, 2001 whereby he was authorised to act on behalf of

the defendant company was annexed to the Agreement. Mr. Ankit Rajgarhia, Advocate, for the defendant company also signed the Settlement

Agreement.

(xv) On 21st November, 2016, this Court passed a decree in terms of the Settlement Agreement dated 11th November, 2016 and recorded that the

parties would remain bound by the settlement.

(xvi) In December, 2016, and January, 2017, several emails were sent by the officers of the plaintiff company to the officers of the defendant

company, requesting for payments to be made in terms of the settlement. Emails dated 27th December, 2016, 13th January, 2017 and 30th January,

2017 were sent to Mr. Chandan Mitra, Chairman and Managing Director of the defendant company. Receipt of these emails has not been denied. In

the same time frame, emails were sent to Mr. Gayas, Chief Financial Officer, defendant company on 26th December, 2016 and 11th January, 2017.

(xvii) On 14th February, 2017, the plaintiff company filed a contempt petition being CCP No.157/2017 against the defendant company for wilful

disobedience of this Court's orders. This Court was of the view that the plaintiff company ought to withdraw the contempt petition and file appropriate

execution proceedings.

(xviii) On 14th March, 2017, the plaintiff company filed an execution petition being Ex.Pet. 19/2017 against the defendant company. Notice was issued

by this Court on 16th March, 2017.

(xix) Soon after notice was issued, the defendant company filed the present application under Order XXIII Rule 3 and 3A in I.A. No.3831/2017

seeking to set aside the settlement and consequent decree. In this application for the first time, the defendant company stated that Mr. O.P. Gupta

was not authorised to act on behalf of the defendant company. This application was supported by the affidavit of Mr. Mrityunjai Singh. I.A.

No.3831/2017 was listed on 27th March, 2017, but the Court was on leave.

(xx) Thereafter, on 05th May, 2017, I.A. No.3831/2017 was listed before this Court. Upon inquiry made by this Court during the hearing, the counsel

for the defendant company stated that Mr. O.P. Gupta continued to remain employed with the defendant company and sought time to place on record

documents with regard to what action had been taken against Mr. O.P. Gupta.

(xxi) On 23rd May, 2017, an inquiry committee was ostensibly constituted by the defendant company.

(xxii) On 25th May, 2017, the plaintiff company filed an application being CrI.M.A. 9159/2017 against Mr. O.P. Gupta, Mr. Mrityunjai Singh and Mr.

Chandan Mitra for making false statements on oath.

(xxiii) It was only thereafter that Mr. O.P. Gupta was placed under suspension.

8. Ms. Trehan stated that even after the revocation of the alleged power of attorney on 2nd September, 2008, Mr. O.P. Gupta on behalf of the

plaintiff company had filed an arbitration petition being Arbitration Petition 22/2013 and an execution petition being Execution Petition 154/2015 on the

strength of the very same power of attorney.

9. Keeping in view the aforesaid facts, Ms. Trehan contended that there was no question of any connivance of the plaintiff company and Mr. O.P.

Gupta. She stated that the plaintiffs had filed the suit on the basis of the actual transaction which had taken place between the parties. She

emphatically stated that the plaintiff company had acted in a bonafide manner on the basis of Board Resolution dated 29th September, 2001 produced

by Mr. O.P. Gupta and the defendant company cannot take any plea contrary to the Board Resolution.

10. Since the defendant-applicant by way of the present application challenged the very basis on which settlements are recorded by this Court on a

daily basis, it appointed Mr. Sanjiv Bahl, Advocate to assist this Court as Amicus Curiae.

11. Mr. Sanjiv Bahl, learned Amicus Curiae stated that though the defendant company had stated that the authority of Mr. O.P. Gupta had been

revoked by resolution dated 02nd September, 2008 in favour of Mr. Anil Kumar, yet in the application it had not been stated that any notice of such

revocation was given either to Mr. O.P. Gupta or it was made known to the third party/ies dealing with the defendant company. This, according to

him, becomes evident from the fact that even the regular lawyer representing the defendant company believed and acted upon the resolution dated

29th September, 2001 by signing the settlement agreement dated 11th November, 2016.

12. The learned Amicus Curiae laid emphasis on Section 208 and 237 of the Indian Contract Act, 1872, which read as under:-

208. When termination of agent's authority takes effect as to agent, and as to third persons. "The termination of the authority of an agent

does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes

known to them.

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237. Liability of principal inducing belief that agent's unauthorised acts were authorised. "When an agent has, without authority, done

acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his

words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

(emphasis supplied)

13. Learned Amicus Curiae pointed out that in Valapad Co-operative Stores Limited Vs. Srinivasa Iyer, AIR 1964 Kerala 176 it has been held as

under:-

7. In the case of an apparent authority, one has first of all to find out in respect of what transaction an agent has apparent authority and

towards whom. That the apparent or the ostensible authority is no authority at all as between the principal and the agent and that it is

different from express or implied authority is clear from the following statement of law by Mr. J.H. Watts, the learned editor of Smith's

Mercantile Law:

“There is a clear distinction between the proper use of the two expressions ‘implied authority’ and ‘ostensible authority.’ The

former is a real authority, the exercise of which is binding not only as between the principal and third parties, but also as between principal

and agent. It differs only from an express authority in that it is conferred by no express words in writing, but is to be gathered from

surrounding circumstances. The term ‘ostensible authority’, on the other hand, denotes no authority at all. It is a phrase conveniently

used to describe the position which arises when one person has clothed another with, or allowed him to assume, an appearance of authority

to act on his behalf, without actually giving him an authority either express or implied, by which appearance of authority a third party is

misled into believing that a real authority exists. As between the so-called principal and agent such ‘ostensible authority’ is of no

effect. As between such principal, however, and the third party it is binding, on the ground that the principal is estopped from averring that

the person whom he has held out and pretended to be his agent is not in fact so. (Smith and Watts' Mercantile Law 8th Ed. 1924, P. 177,

note (a).)

14. Learned Amicus Curiae lastly pointed out that the defendant had specifically pleaded that there had been no service on the defendant company

due to the manipulation done by Mr. O.P. Gupta. He stated that once the plea of non-service of summons had been raised, then the decree so passed

in the suit is deemed to be an ex-parte decree. According to him, in such a case, an application ought to have been moved under Order IX Rule 13

CPC and not under Order XXIII Rule 3A CPC.

15. In rejoinder, Mr. K.K. Sharma, learned senior counsel for the defendant company submitted that Sections 208 and 237 of the Indian Contract Act,

1872, were not applicable to the present case as Mr. O.P. Gupta was not an agent but an officer of the defendant company. He reiterated that under

the provisions of Order XXIII Rule 3 CPC satisfaction of the Court about a valid agreement or compromise is a mandatory requirement. According to

him, a settlement agreement entered into by a person acting on behalf of the company ostensibly on the basis of a general authorization made fifteen

years before and the manner in which the settlement took place without any opportunity for the Board of Directors of the company being apprised

about the proposed terms of settlement was illegal. Therefore, he prayed that the order dated 26th November, 2016 be set aside.

16. Having heard learned counsel for the parties, this Court is of the opinion that the contentions of the defendant that Mr. O.P. Gupta in connivance

with the plaintiff had defrauded the defendant and/or had manipulated the service and/or was not the authorised person on behalf of the defendant to

defend and/or compromise the matter and/or the defendant company had no knowledge of the pendency of the present proceedings are contrary to

facts and untenable in law. Also the plea of the defendant that Mr. O.P. Gupta ""collusively kept the entire matter of the present suit a secret from the

defendant company and its authorised decision makers right from the stage of legal notices...."" is demonstrably false in light of the following admitted

facts:-

(i) Reply to plaintiff's Notice of Termination dated 02nd June, 2015 was issued by Mr. Abhishek Saxena, COO, defendant company, which is

reproduced hereinbelow:-

“June 2, 2015

Mr. Shashank Bhagat

Chairman & Managing Director

United India Periodicals Pvt Ltd.

Dear Mr. Bhagat

This is how we propose to clear the arrears of rent that have unintentionally accumulated for the last few months.

1. Enclosed please find a cheque no.129388 drawn on Central Bank of India Press Area Branch dated 02nd June, 2015 for 3 months (FY

2014-15) rent including maintenance charges amounting to Rs.26,64,690/-.

2. Subsequently, starting July 2015 we shall pay you 1 month's current rent plus 1 month's back rent, every month till the time old

outstanding get cleared.

3. No further back log will be accumulated as the current rent will be paid every month on a regular basis.

4. Between now and October, if our financial conditions improve, we hope to make a bulk payment or at any rate a substantial payment so

that the dues are cleared even before the proposed date.

I hope these proposals are acceptable to you and hence the legal notice served on us will be kept in abeyance.

Thanking you,

Yours sincerely

Sd/-

ABHISHEK SAXENA

Chief Operating Officer

(emphasis supplied)

(ii) Service reports filed by the process servers of this Court state that one Mr. Dinesh, who identified himself as Mr. Chandan Mitra's driver, refused

to take service after consulting Mr. Chandan Mitra on the phone. The English translations of the three process servers' reports are reproduced

hereinbelow:-

a) Report dated 21st December, 2015:-

Sir,

Today dated 21.12.15, I visited at the address mentioned in the summons i.e. H-33 A, Lane W-10 C, Sainik Farms, New Delhi and enquired

about CMYK Printech Ltd. for service of summons. The Guard present at the spot did not disclose his name and verbally told that the 'Sahib'

was not present and it was only he who knew about the summons and bluntly refused to give any statement in writing. No witness was

present at the spot. The report is submitted.

b) Report dated 23rd January, 2016:-

Sir,

Today dated 23.01.16, I visited at the address mentioned in the summons i.e. H-33 A, Lane W-10 C, Sainik Farms, New Delhi and enquired

about CMYK Printech Ltd. for service of summons. The person present at the spot introduced himself as Dinesh and told that he was a

driver and made a telephonic conversation with the owner Chandra Mishra and verbally told that he had been directed not to receive the

summons there itself, the summons would be received at their Admin. Office, 3, Link House, Bahadur Shah Zafar Marg, New Delhi. He

bluntly refused to give any statement in writing and did not receive the summons himself. Hence, the summons be served through the

jurisdiction of THC Central District. The report is submitted.

I swear that the aforesaid report is true and correct.

Sd/- illegible Dated 23.01.16

(emphasis supplied)

c) Report dated 12th February, 2016:-

Sir,

Today dated 12.02.16, I visited at the office address mentioned in the summons i.e. Link House, 2nd Floor, CMYK Printech Ltd. and produced the

summons for service. Sh. O.P. Gupta, Law Manager present at the spot read the summons and the copy and received the same at his responsibility.

The summons has been served. Report is submitted.

Sd/- illegible

Dated 12.02.16

I swear that the aforesaid report is true and correct.

Sd/- illegible

(emphasis supplied)

(iii) Email dated 09th November, 2016 (enclosing settlement terms) from counsel for the defendant (Karanjawala & Co.) to plaintiff's counsel. The

said email was copied to both Mr. O.P. Gupta and Mr. Abhishek Saxena (COO of the defendant-applicant). The same is reproduced hereunder:-

(iv) A Board Resolu(cid:13)on dated 29th September, 2001 was annexed with the Se(cid:29)lement Agreement which was produced by Mr. O.P. Gupta in support of his

authority. The same is reproduced hereunder:-

(v) Receipts by Mr. Chandan Mitra, Managing Director of the defendant company, of plaintiff's emails dated 27th December, 2016, 13th January,

2017 and 30th January, 2017 alleging non compliance of settlement decree dated 11th November, 2016, are not denied.

(vi) Receipts by Mr. Gayas, Chief Financial Officer of the defendant company of the plaintiff's emails dated 26th December, 2016 and 11th January,

2017 alleging non compliance of settlement decree dated 11th November, 2016, are not denied.

(vii) No criminal complaint has been instituted till date against Mr. O.P. Gupta despite the allegation of fraud and collusion made against him by the

defendant company itself. It was only upon an inquiry by this Court on 05th May, 2017 as to what action had been taken against Mr. O.P. Gupta that

on 23rd May, 2017 an inquiry was initiated. Mr. Gupta was suspended only after this Court issued notice to the senior management of the defendant

company in the application filed by the plaintiff being I.A. No. 9159/2017 under Section 340 Cr. P.C.

(viii) It was not disputed that the law firm Karanjawala & Co., which signed the settlement application, was paid by the defendant company and not by

Mr. O.P. Gupta personally.

(ix) The defendant's defence is also contrary to contemporary documents inasmuch as if the defendant-applicant's defense was correct then

there would have been no occasion to enter into a subsequent unregistered lease deed dated 18th April, 2015 between the parties. Along with the said

lease deed, the arrears of rent due at that time was annexed and signed by both the parties. It is pertinent to mention that Mr. Abhishek Saxena, Chief

Operating Officer had signed the said documents on behalf of the defendant-applicant company.

17. The judgments relied upon by the defendant company are not relevant for the decision of the present case, as the same relate to the institution of

the plaint before the Courts and in the said judgments, it has been specifically held that the person filing it had no authority to file the suit in the

absence of any proper resolution. However, in the present case, admittedly, Mr. O.P. Gupta produced the Board Resolution dated 29th September,

2001 which duly conferred the authority on him to execute the compromise settlement dated 11th November, 2016.

18. This Court is also of the view that if the signatures on the settlement and vakalatnama were without authorisation, then the suit was liable to be

decreed ex parte. In the opinion of this Court, defendant cannot take benefit of Mr. O.P. Gupta's Power of Attorney, Vakalatnama and Authorisation

to avoid being proceeded ex parte on day one and then deny his authorisation when it comes to execution of a compromise deed.

19. This Court is further in agreement with the submission of the learned Amicus Curiae that apparent authority principle (also called "ostensible

authority") is attracted to the present case. Apparent authority relates to the doctrine of the law of agency and refers to a situation where a reasonable

third party would understand that an agent had authority to act. If third parties innocently, and believing the scope of authority of agent as held out deal

with the agent, the principal is bound by the acts of the agent. This means a principal is bound by the agent's actions, even if the agent had no actual

authority, whether express or implied. It raises an estoppel because the third party is given an assurance, which he relies on and it would be inequitable

for the principal to deny the authority given. Apparent authority can legally be found, even if actual authority has not been given. In Clifford George

Pinto Vs. Shenava & Ors., AIR 2005 Kar. 167 it has been held as under:-

22. The provisions of Section 237 envisage that if the principal by his words or conduct induces third persons to believe that the acts and

obligations are within the scope of agent's authority, it would bind the principal. In the present case, the plaintiff has constituted the first

defendant as his power of attorney executing Ex. D.57 may be to deal with only one item of the property. The said conduct takes the case

squarely within the scope of the words principal by his act induces such third persons. The plaintiff to his peril has chosen unscrupulous

person as his power of attorney and allowed scope for manipulation and forgery by the power of Attorney. The defendant Nos. 2 and 3

without the knowledge of forgery and fraud, going by the apparent tenor of Ex: D.57, bonafidely purchased the property assuming that the

first defendant was within the scope to deal with the properties, therefore, the transaction binds the plaintiff.

(emphasis supplied)

20. Since in the present case, Mr. O.P. Gupta had been working as Manager (HR) with the defendant company for long and had produced the

resolution dated 29th September, 2001 holding an authority for and on behalf of the defendant company duly passed by the Board of Directors to

defend the case as well as to enter into a compromise and as such, the compromise entered into between the parties duly countersigned by the

Advocate for and on behalf of the defendant company cannot be faulted with.

21. This Court is of the view that the settlement in the present case has not only been signed by Mr. O.P. Gupta but also by an Advocate for and on

behalf of the defendant company and no challenge has been made to his competency to sign the said agreement. In Pushpa Devi Bhagat Vs. Rajinder

Singh & Ors., 2006 (5) SCC 566 the Supreme Court has held that the expression in Order XXIII Rule 3 CPC "lawful agreement or compromise in

writing", need not be by means of a formal instrument, and statement of parties or counsel made in Court will be a sufficient compliance of the

requirement of Order XXIII Rule 3 CPC.

22. The Supreme Court in Byram P. Gariwala Vs. Union Bank of India, (1992) 1 SCC 31 has held that to insist upon the party himself personally

signing the agreement or compromise would often cause undue delay, loss and inconvenience. The court held that it has always been universally

understood that a party can always act by his duly authorized representative and if a Power of Attorney holder can enter into an agreement or

compromise on behalf of his principal, so can a counsel, possessed of the required authorization by Vakalatnama, act on behalf of his client.

23. A Coordinate Bench of this Court in Vijay Kumar Malhotra Vs. Vashisht Malhotra, RFA No. 54/2008 decided on 5th December, 2011 has held

that the statements made by their counsel in court amount to sufficient compliance of Order XXIII Rule 3 CPC.

24. Consequently, this Court is of the opinion that the defendant company is bound by a validly executed settlement entered into before the Mediation

Centre of this Court. A Division Bench of this Court in the case of Naresh Kumar & Ors. Vs. Ashok Arora & Ors. (MANU/DE/9778/2007) has held

If such pleas are sustained, the sanctity and purpose of 'amicable settlements' between the parties would stand totally eroded. Amicably resolution of

disputes and negotiated settlements is 'public policy in India'. Section 89 of the Code of Civil Procedure, Arbitration and Conciliation Act, 1996 as well

as Legal Services Authorities Act, 1995 call upon the Courts to encourage settlements of legal disputes through negotiations between the parties. If

amicable settlements are discarded and rejected on flimsy pleas, the parties would be wary of entering into negotiated settlements and making

payments thereunder as a shrewd party after entering into a negotiated settlement, may pocket the amount received under it and thereafter challenge

the settlement and re-agitate the dispute causing immeasurable loss and harassment to the party making payment thereunder. This tendency has to be

checked and such litigants discouraged by the Courts. It would be in consonance with public policy of India.

25. Even otherwise this Court has examined the defense raised in the application under Order XXIII Rule 3 and 3A CPC by the defendant-applicant

on merits and finds that the same is untenable in law. It is pertinent to mention that the defendant-applicant has pleaded a right over the suit property

i.e. immovable property on the basis of an alleged Agreement/Undertaking dated 09th June, 2011 up till May 2026 on the payment of specific

amounts. The said defense in the opinion of this Court is contrary to Sections 17 and 49 of the Registration Act, 1908 inasmuch as a right in any

immovable property can only be created by way of a registered document. The admitted position is that no original registered document has been

placed on record to show the nature of such a right.

26. Consequently, this Court is of the view that the rights whether in the nature of tenancy, licensee or possessory so claimed by the defendant-

applicant could be terminated any time by the plaintiff company by giving notice to the defendant company. In fact, the filing of the suit in itself

amounted to the termination of the rights of the defendant-applicant in view of the judgment of the Supreme Court in Nopany Investments (P) Ltd. vs.

Santokh Singh (HUF), 2008 2 SCC 728, in which it has been held as under:-

“In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the

tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under section 106 of the Transfer of Property Act in

order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this

court in V. Dhanapal Chettiar V. Yesodai Ammal (1929) 4 SCC 214.

27. This Court is also of the opinion that the plea of the defendant-applicant that the authority had been revoked by the Board of Directors on 02nd

September, 2008 is a defense as would be apparent from the fact that Mr. O.P. Gupta had subsequent to the alleged revocation

of Power of Attorney in 2008, filed, signed and verified, as an authorized representative of the defendant company, an arbitration petition being

Arbitration Petition No.22/2013 and an execution petition being Ex. Pet. No.154/2015 on the strength of the same Board Resolution dated 29th

September, 2001. The files of the said two cases had been summoned and examined by this Court. Till date, no application has been filed by the

defendant company for recall of the orders passed in Arbitration Petition No.22/2013 and Execution Petition No.154/2015.

28. Consequently, for all the reasons stated above, the present applications, being bereft of merits, are dismissed. Before parting with the case, this

Court places on record its appreciation for the services rendered by the learned Amicus Curiae.